

Exemption; museum offering degree program. A nonprofit organization established to operate a museum which, as part of its program, offers accredited seminar and degree programs with a regular faculty and curriculum to qualified students of a local university and provides a lecture series open to students and the general public is not a nonprofit educational organization exempt from retailers, manufacturers, and communications excise taxes; however, the seminar and degree programs are educational activities that qualify as a school within the meaning of the term 'nonprofit educational organization' and the exemptions from tax apply to sales of articles or services to the organization for the exclusive use in these programs.

Advice has been requested whether, under the circumstances described below, an organization, or an activity of the organization, is a 'nonprofit educational organization' for purposes of the Federal excise tax exemptions provided by sections 4057(a), 4221(a)(5), and 4294(a) of the Internal Revenue Code of 1954.

The organization was established to maintain and operate a museum facility. As part of its museum program, the organization, jointly and in sponsorship with a local university, annually offers a degree program in museology, and accredited seminars in art and history, to qualified graduate and undergraduate students of the university. Students participating in the programs must register with, and pay tuition to, the university in order to receive academic credit for courses taken at the museum.

The degree program includes curatorial and museum administration courses while the seminar program includes such courses as landscape art, history of American furniture and decorative art, American folk art, and the art and history of pre-industrial America. Classes are taught in the school facilities of both the museum and the university, by members of the museum organization's staff who are also, in some cases, members of the faculty of the university.

In addition, the organization provides a lecture series at the museum on various aspects of American art. Each lecture is presented by a different guest speaker and the series is available to both students and the general public.

The organization is exempt from Federal income tax under section 501(a) of the Code, as an organization described in section 501(c)(3).

There are no restrictions against admissions based on race and the organization has a racially nondiscriminatory policy as to students within the meaning of Rev. Rul. 71-447, 1971-2 C.B. 230.

Sections 4057(a) and 4221(a)(5) of the Code provide that no

retailers excise taxes or manufacturers excise taxes shall be imposed on sales of taxable articles to a nonprofit educational organization for its exclusive use, or in the case of tax imposed by section 4041, with respect to the use by a nonprofit educational organization of any liquid as a fuel.

Section 4294(a) of the Code provides that no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for communication services or facilities furnished to such organization.

Under the provisions of sections 4057(b), 4221(d)(5), and 4294(b) of the Code, the term 'nonprofit educational organization' (as used in sections 4057(a), 4221(a)(5), and 4294(a)) means an educational organization described in section 170(b)(1)(A)(ii) that is exempt from income tax under section 501(a). The term also includes a school operated as an activity of an organization described under section 501(c)(3) that is exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Section 170(b)(1)(A)(ii) of the Code describes an 'educational organization' as an organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Consistent with section 170(b)(1)(A)(ii) and the regulations thereunder, section 148.1-4(b) of the Temporary Regulations under the Excise Tax Technical Changes Act of 1958 provides that such nonprofit educational organization must have as its primary function the presentation of formal instruction.

Other than the requirements of normally maintaining a regular faculty and curriculum, and normally having a regularly enrolled student body at the place where its educational activities are regularly carried on, the statute imposes no limitation on the character of a school's enrollment for purposes of the excise tax exemptions. Thus, the exemptions may apply regardless of the fact that a school's student body may also qualify as students of another educational organization. See Rev. Rul. 64-287, 1964-2 C.B. 403, which provides that a church foundation, located on the campus of a university, that offers courses to university students qualifies as a nonprofit educational organization.

In the instant case, the primary function of the organization is not the presentation of formal instruction, but rather the maintaining and operation of a museum. The fact that it provides educational programs as part of its overall operation is insufficient, in itself, to bring the organization's primary purpose within the scope of section 148.1-4(b) of the regulations.

Accordingly, the organization does not meet the prescribed

requirements under the regulations to qualify as a nonprofit educational organization as that term is used in sections 4057(b), 4221(d)(5), and 4294(b) of the Code. Therefore, except as provided below, the exemptions from the retailers and manufacturers excise taxes provided by sections 4057(a) and 4221(a)(5), and the exemption from the communications taxes provided by section 4294(a), do not apply to sales of taxable articles or communication services to the organization for the day to day operation of the museum.

However, the above-described museology degree program and the seminar programs conducted by the organization meet the requirements of regular faculty and curriculum prescribed in the statute. Furthermore, such programs have a regularly enrolled body of students in regular attendance at a designated place where the educational programs are carried on, notwithstanding the fact the students are also students of the local university. Therefore, the organization is conducting a 'school operated as an activity' of an exempt organization so as to be considered a nonprofit educational organization within the meaning of the statute.

Accordingly, the exemptions from the retailers and manufacturers excise taxes provided by sections 4057(a) and 4221(a)(5) of the Code, and the exemption from the communications taxes provided by section 4294(a), apply to sales of taxable articles or communications services to the organization for exclusive use in its degree and seminar programs.

However, sales of taxable articles or communication services to the organization for use in its lecture series do not come within the above exemptions since that series does not meet the statutory requirements of a regular faculty and curriculum, nor does the series have a regularly enrolled body of students.